

Securities and Exchange Commission

Pt. 231

INTERPRETATIVE RELEASES RELATING TO THE SECURITIES ACT OF 1933 AND GENERAL RULES AND REGULATIONS THEREUNDER—Continued

Subject	Release No.	Date	Fed. Reg. Vol. and page
Option and option-related transactions during underwritten offerings	6297	Mar. 6, 1981	46 FR 16670.
Issuance of "Retail Repurchase Agreements" by Banks and Savings and Loan Associations.	6351	Sept. 25, 1981	46 FR 48637.
Effect of Revenue Ruling 81-225 on Issuers and Holders of Certain Variable Annuity Contracts.	6352	Sept. 28, 1981	46 FR 48640.
Recission of Guides and Redesignation of Industry Guides	6384	Mar. 3, 1982	47 FR 11480.
Revisions to the Division of Corporation Finance's Guide 5 and Amendment of Related Disclosure Provisions.	6405	June 3, 1982	47 FR 25122.
Continuous and Delayed Offerings by Foreign Governments or Political Subdivisions thereof.	6424	Sept. 2, 1982	47 FR 39809.
Supplemental disclosures of oil and gas producing activities	6444	Dec. 15, 1982	47 FR 57914.
Regulation D	6455	Mar. 3, 1983	48 FR 10045.
Revision of Financial Statement Requirements and Industry Guide Disclosure for Bank Holding Companies.	6458	Mar. 7, 1983	48 FR 11113.
Revision of Industry Guide Disclosures for Bank Holding Companies	6478	Aug. 11, 1983	48 FR 37613.
Public Statements by Corporate Representatives	6504	Jan. 13, 1984	49 FR 2469.
Rules and Guide for Disclosures Concerning Reserves for Unpaid Claims and Claim Adjustment Expenses of Property-Casualty Underwriters.	6559	Nov. 27, 1984	49 FR 47594.
Securities Issued or Guaranteed by United States Branches or Agencies of Foreign Banks.	6661	Sept. 29, 1986	51 FR 34462.
Amendments to Industry Guide Disclosures by Bank Holding Companies	6677	Dec. 3, 1986	51 FR 43594.
Statement of the Commission Regarding Disclosure Obligations of Companies Affected by the Government's Defense Contract Procurement Inquiry and Related Issues.	6791	Aug. 1, 1988	53 FR 29226.
Statement of the Commission Regarding Disclosure by Issuers of Interests in Publicly Offered Commodity Pools.	6815	Feb. 1, 1989	54 FR 5600.
Management's Discussion and Analysis of Financial Condition and Results of Operations; Certain Investment Company Disclosures.	6835	May 18, 1989	54 FR 22427.
Limited Partnership Reorganizations and Public Offerings of Limited Partnership Interests.	6900	June 17, 1991	56 FR 28986.
Acceptability in Financial Statements of an Accounting Standard Permitting the Return of a Nonaccrual Loan to Accrual Status After a Partial Charge-off.	6906	July 29, 1991	56 FR 37000.
Statement of the Commission Regarding Disclosure Obligations of Municipal Securities Issuers and Others.	7049	Mar. 9, 1994	59 FR 12758.
Amendment of Interpretation Regarding Substantive Repossession of Collateral Problematic Practices Under Regulation S	7060	May 12, 1994	59 FR 26109.
Use of Electronic Media for Delivery Purposes	7190	July 27, 1995	60 FR 35666.
Use of Electronic Media by Broker-Dealers	7233	Oct. 6, 1995	60 FR 53467.
	7288	May 15, 1996	61 FR 24651.

PART 232—REGULATION S-T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

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TRANSITION TO ELECTRONIC FILING

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AUTHORITY: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78l, 78m, 78n, 78o(d), 78w(a), 78ll(d), 79t(a), 80a–8, 80a–29, 80a–30 and 80a–37.

SOURCE: 58 FR 14670, Mar. 18, 1993, unless otherwise noted.

GENERAL

§ 232.10 Application of part 232.

(a) This part, in conjunction with the EDGAR Filer Manual and the electronic filing provisions of applicable rules, regulations and forms, shall govern the electronic submission of documents filed or otherwise submitted to the Commission and shall be controlling for an electronic format document in the manner and respects provided in this part.

(b) A Form ID (§§ 239.63, 249.446, 259.602, 269.7 and 274.402 of this chapter), the uniform application for access codes to file on EDGAR, shall be filed by each registrant, third party, or agent prior to becoming subject to mandated electronic filing.

NOTE: It is strongly urged that Forms ID be submitted to the Commission between three and six months prior to becoming subject to mandated electronic filing.

§ 232.11 Definition of terms used in part 232.

Unless otherwise specifically provided, the terms used in Regulation S-T (part 232 of this chapter) have the same meanings as in the federal securities laws and the rules, regulations and forms promulgated thereunder. In addition, the following definitions of terms apply specifically to electronic format documents and shall apply wherever they appear in laws, rules, regulations and forms governing such documents, unless the context otherwise specifies:

(a) *Business development company*. The term *business development company* has

the meaning set forth in section 2(a)(48) of the Investment Company Act.

(b) *Direct transmission*. The term *direct transmission* means the transmission of one or more electronic submissions via a telephonic communication session.

(c) *EDGAR*. The term *EDGAR* (Electronic Data Gathering, Analysis, and Retrieval) means the computer system for the receipt, acceptance, review and dissemination of documents submitted in electronic format.

(d) *EDGAR Filer Manual*. The term *EDGAR Filer Manual* means the current version of the manual prepared by the Commission setting out the technical format requirements for an electronic submission.

NOTE: See Rule 301 of Regulation S-T (§ 232.301).

(e) *Electronic filer*. The term *electronic filer* means a person or an entity that submits filings electronically pursuant to Rules 101, 901, 902 or 903 of Regulation S-T (§§ 232.101, 232.901, 232.902 or 232.903, respectively).

(f) *Electronic filing*. The term *electronic filing* means a document filed under the federal securities laws that is transmitted or delivered to the Commission in electronic format.

(g) *Electronic format*. The term *electronic format* means the computerized format of a document prepared in accordance with the EDGAR Filer Manual.

(h) *Electronic submission*. The term *electronic submission* means any document, such as a filing, correspondence, or modular submission, or any discrete set of documents, transmitted or delivered to the Commission in electronic format.

(i) *Exchange Act*. The term *Exchange Act* means the Securities Exchange Act of 1934.

(j) *Header information*. The term *header information* means information designated by the EDGAR Filer Manual to precede the text of each electronic submission and document submitted therewith via EDGAR that identifies characteristics of the submission and documents in order to facilitate electronic processing by the EDGAR system.

(k) *Investment Company Act*. The term *Investment Company Act* means the Investment Company Act of 1940.

(l) *Modular submission*. The term *modular submission* means an electronic submission that contains one or more documents, or portions of a document, submitted for storage in the non-public EDGAR data storage area for purposes of subsequent inclusion in one or more electronic filings pursuant to Rule 501(a) of Regulation S-T (§232.501(a)).

(m) *Official filing*. The term *official filing* means a microfiche copy, prepared in compliance with the Commission's administrative regulations and other requirements, of a registration statement, report or other document filed under the federal securities laws, regardless of filing medium and exclusive of header information, tags and any other technical information required in an electronic filing.

(n) *Original*. The term *original*, when used or implied in the securities laws, rules, regulations or forms, includes the writing itself or any counterpart intended to have the same effect by a person executing or issuing it. If data are stored in a computer or similar device, any printout or other output readable by sight, shown to reflect the data accurately, is an original.

(o) *Paper format*. The term *paper format* means a paper document.

(p) *Phase-in date*. The term *phase-in date* means the date established by the Commission on and after which a registrant is required to submit filings electronically pursuant to Rule 101 of Regulation S-T (§232.101).

(q) *Public Utility Act*. The term *Public Utility Act* means the Public Utility Holding Company Act of 1935.

(r) *Registrant*. The term *registrant* means an issuer of securities for which a Securities Act registration statement is required to be filed and/or an issuer of securities with respect to which an Exchange Act registration statement or report is required to be filed and/or an investment company required to file an Investment Company Act registration statement or report.

(s) *Securities Act*. The term *Securities Act* means the Securities Act of 1933.

(t) *Segmented Filing*. The term *segmented filing* means an electronic format document assembled from seg-

ments previously submitted to the non-public EDGAR data storage for one-time inclusion in an electronic filing pursuant to Rule 501(b) of Regulation S-T (§232.501(b)).

(u) *Tag*. The term *tag* means an identifier that highlights specific information to EDGAR that is in the format required by the EDGAR Filer Manual.

(v) *Third party filer*. The term *third party filer* means any person or entity that files documents with the Commission with respect to another entity.

(w) *Trust Indenture Act*. The term *Trust Indenture Act* means the Trust Indenture Act of 1939.

§ 232.12 Business hours of the Commission.

(a) *General*. The principal office of the Commission, at 450 Fifth Street, NW., Washington, DC 20549, is open each day, except Saturdays, Sundays, and federal holidays, from 9 a.m. to 5:30 p.m., Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect, *provided that* hours for the filing of documents pursuant to the Acts or the rules and regulations thereunder are as set forth in paragraphs (b) and (c) of this section.

(b) *Submissions made in paper or on magnetic tape or diskette*. Paper documents filed with or otherwise furnished to the Commission, as well as electronic filings and submissions on magnetic tape or diskette under cover of Form ET (§§239.62, 249.445, 259.601, 269.6 and 274.401 of this chapter), may be submitted to the Commission each day, except Saturdays, Sundays and federal holidays, from 8 a.m. to 5:30 p.m., Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect. Submissions on magnetic tape or diskette may be filed either at the address indicated in paragraph (a) of this section, or at the Commission's Operations Center, 6432 General Green Way, Alexandria, VA 22312-2413.

(c) *Submissions by Direct Transmission*. Electronic filings and other documents may be submitted by direct transmission to the Commission each day, except Saturdays, Sundays and federal holidays, from 8 a.m. to 10 p.m., Eastern Standard Time or Eastern Daylight

Saving Time, whichever is currently in effect.

[58 FR 14670, Mar. 18, 1993; 58 FR 21349, Apr. 21, 1993, as amended at 59 FR 67761, Dec. 30, 1994]

§ 232.13 Date of filing; adjustment of filing date.

(a) *General.* (1) Except as provided in paragraph (b) of this section, the business day on which a filing is received by the Commission shall be the date of filing thereof, if:

(i) All requirements of the Acts and rules applicable to such filing have been complied with;

(ii) The filing conforms to the applicable technical standards regarding electronic format in the EDGAR Filer Manual; and

(iii) With respect to Securities Act filings, the required fee payment has been confirmed, *provided that* the failure to pay an insignificant amount of the fee at the time of the filing, as a result of a *bona fide* error, shall not affect the date of filing.

(2) If the conditions of paragraph (a)(1) of this section are otherwise satisfied, all filings submitted by direct transmission commencing on or before 5:30 p.m. Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect, shall be deemed filed on the same business day, and all filings submitted by direct transmission commencing after 5:30 p.m. Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect, shall be deemed filed as of the next business day.

(3) Notwithstanding paragraph (a)(2) of this section, any registration statement or any post-effective amendment thereto filed pursuant to Rule 462(b) (§ 230.462(b) of this chapter) by direct transmission commencing on or before 10 p.m. Eastern Standard Time or Eastern Daylight Savings Time, whichever is currently in effect, shall be deemed filed on the same business day.

NOTE: Electronic filings that have an automatic or immediate effective date must be deemed filed, as provided in paragraph (a) of this section, before any waiting period for automatic effectiveness commences or before the filing becomes immediately effective, whichever applies.

(b) *Adjustment of the filing date.* If an electronic filer in good faith attempts to file a document with the Commission in a timely manner but the filing is delayed due to technical difficulties beyond the electronic filer's control, the electronic filer may request an adjustment of the filing date of such document. The Commission, or the staff acting pursuant to delegated authority, may grant the request if it appears that such adjustment is appropriate and consistent with the public interest and the protection of investors.

(c) *Payment of fees.* Fees required with respect to a filing that is submitted electronically shall be paid in accordance with the procedures set forth in Instructions for Filing Fees—Rule 3a of the Commission's Informal and Other Procedures (§ 202.3a of this chapter).

NOTE. All filing fees paid by electronic filers must be submitted to the lockbox depository, as provided in Rule 3a, including those pertaining to documents filed in paper pursuant to a hardship exemption.

(d) Where the Commission's rules, schedules and forms provide that a document may be "mailed for filing with the Commission" at the same time it is published, furnished, sent or given to security holders or others, an electronic filer may file the document with the Commission electronically before or on the date the document is published, furnished, sent or given, or if such publication or distribution does not occur on a business day of the Commission, as soon as practicable on the next business day. Any associated time periods shall be calculated on the basis of the publication or distribution date (as applicable), and not on the basis of the date of filing.

[58 FR 14670, Mar. 18, 1993, as amended at 59 FR 67761, Dec. 30, 1994; 60 FR 26618, May 17, 1995]

ELECTRONIC FILING REQUIREMENTS

§ 232.101 Mandated electronic submissions and exceptions.

(a) *Mandated electronic submissions.* (1) The following filings, including any related correspondence and supplemental information, except as otherwise provided, shall be submitted in electronic format:

(i) Registration statements and prospectuses filed pursuant to the Securities Act (15 U.S.C. 77a, *et seq.*) or registration statements filed pursuant to Sections 12(b) or 12(g) of the Exchange Act (15 U.S.C. 78j(b) or (g));

(ii) Statements and applications filed with the Commission pursuant to the Trust Indenture Act (15 U.S.C. 77aaa, *et seq.*), other than applications for exemptive relief filed pursuant to Section 304(c) (15 U.S.C. 77ddd(c)) on Form T-4 (§269.4 of this chapter) and Section 310(b)(1)(ii) (15 U.S.C. 77jjj(b)(1)(ii)) of that Act;

(iii) Statements, reports and schedules filed with the Commission pursuant to Sections 13, 14, or 15(d) of the Exchange Act (15 U.S.C. 78m, n, and o(d)), except Form 13F (§249.325 of this chapter), *provided that* if a registrant's first mandated electronic filing would be an annual report on Form 10-K (§249.310 of this chapter) or Form 10-KSB (§249.310b of this chapter) such annual report may, at the option of the registrant, be submitted in paper format;

(iv) Documents filed with the Commission pursuant to Sections 8, 17, 20, and 30 of the Investment Company Act (15 U.S.C. 80a-8, 80a-17, 80a-20, and 80a-29); *provided, however* that in no event shall any submissions under Section 6(c), 8(f), or 17(g) of the Act (15 U.S.C. 80a-6(c), 80a-8(f), or 80a-17(g)) or documents related to applications for exemptive relief under any section of the Act, be made in electronic format; and

(v) Documents filed with the Commission pursuant to the Public Utility Act (15 U.S.C. 79a *et seq.*).

(2) The following amendments to filings, including any related correspondence and supplemental information except as otherwise provided, shall be submitted as follows:

(i) Any amendment to a filing by or relating to a registrant required to file electronically, including any amendment to a paper filing, shall be submitted in electronic format;

(ii) The first electronic amendment to a paper format Schedule 13D (§240.13d-101 of this chapter) or Schedule 13G (§240.13d-102 of this chapter) shall restate the entire text of the Schedule 13D or 13G (§240.13d-101 or §240.13d-102 of this chapter), but pre-

viously filed paper exhibits to such Schedules are not required to be restated electronically. See Rule 102 (§232.102) regarding amendments to exhibits previously filed in paper format.

(3) Supplemental information shall be submitted in electronic format except as provided in paragraph (c)(2) of this section. The information shall be stored in the non-public EDGAR data storage area as correspondence. Supplemental information that is submitted in electronic format shall not be returned.

NOTE: Failure to submit a required electronic filing pursuant to this paragraph (a), as well as any required confirming electronic copy of a paper filing made in reliance on a hardship exemption, as provided in Rules 201 and 202 of Regulation S-T (§§232.201 and 232.202), will result in ineligibility to use Forms S-2, S-3, S-8, F-2 and F-3 (see §§239.12, 239.13, 239.16b, 239.32 and 239.33 of this chapter, respectively), restrict incorporation by reference of the document submitted in paper (see Rule 303 of Regulation S-T (§232.303)), or toll certain time periods associated with tender offers (see Rule 13e-4(f)(12) (§240.13e-4(f)(12) of this chapter) and Rule 14e-1(e) (§240.14e-1(e) of this chapter)).

(b) *Permitted electronic submissions.* The following documents may be submitted to the Commission in electronic format, at the option of the electronic filer:

(1) Annual Reports to Security Holders furnished for the information of the Commission pursuant to Rule 14a-3(c) (§240.14a-3(c) of this chapter) and Rule 14c-3(b) (§240.14c-3(b) of this chapter);

(2) Notices of exempt solicitation furnished for the information of the Commission pursuant to Rule 14a-6(g) (§240.14a-6(g) of this chapter) and notices of exempt preliminary roll-up communications furnished for the information of the Commission pursuant to Rule 14a-6(n) (§240.14a-6(n) of this chapter);

(3) Form 11-K (§249.311 of this chapter). Registrants who satisfy their Form 11-K filing obligations by filing amendments to Forms 10-K or 10-KSB, as provided by Rule 15d-21 (§240.15d-21 of this chapter), also may choose to file such amendments in paper or electronic format;

(4) Forms 3, 4 and 5 (§§249.103, 249.104 and 249.105 of this chapter);

(5) Form 144 (§239.144 of this chapter), where the issuer of the securities is subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act (15 U.S.C. 78m or 78o(d), respectively);

(6) Periodic reports and reports with respect to issuances of primary obligations filed by the International Bank for Reconstruction and Development pursuant to Section 15(a) of the Bretton Woods Agreements Act [22 U.S.C. 286k-1(a)] and part 285 of Title 17 of the Code of Federal Regulations;

(7) Reports on Form 13F (§249.325 of this chapter), filed with the Commission by institutional investment managers as required by Section 13(f)(1) (15 U.S.C. 78m(f)(1)) of, and Rule 13f-1 (§240.13f-1 of this chapter) under, the Exchange Act on magnetic tape in the format described in Form 13F-E (§249.326 of this chapter); and

(8) Exhibits to Form N-SAR (§274.101 of this chapter), except that the Financial Data Schedule required under Rule 483 under the Securities Act of 1933 (§230.483 of this chapter) shall be filed in electronic format.

(c) *Documents to be submitted in paper only.* The following shall not be submitted in electronic format:

(1)(i) Confidential treatment requests and the information with respect to which confidential treatment is requested;

(ii) Preliminary proxy materials and information statements with respect to a matter specified in Item 14 of Schedule 14A (§240.14a-101 of this chapter) for which confidential treatment has been requested in the manner prescribed by Rule 14a-6(e)(2) (§240.14a-6(e)(2) of this chapter) or Rule 14c-5(d)(2) (§240.14c-5(d)(2) of this chapter);

(2) Supplemental information, if the submitter requests that the information be protected from public disclosure under the Freedom of Information Act (5 U.S.C. 552) pursuant to a request for confidential treatment under Rule 83 (§200.83 of this chapter) or if the submitter requests that the information be returned after staff review and the information is of the type typically returned by the staff pursuant to Rule 418(b) of Regulation C (§230.418(b) of this chapter) or Rule 12b-4 of Regulation 12B (§240.12b-4 of this chapter);

(3) Shareholder proposals and all related correspondence submitted pursuant to Rule 14a-8 of the Exchange Act (§240.14a-8 of this chapter);

(4) No-action and interpretive letter requests (§200.81 of this chapter and 15 U.S.C. 78l(h));

(5) Form SR (§239.61 of this chapter);

(6) Applications for exemptive relief filed pursuant to Sections 304(d), 310(b) and 310(b)(1)(ii) of the Trust Indenture Act and applications under Section 304(c) of that Act on Form T-4;

(7) Filings related to offerings exempt from registration under the Securities Act of 1933, including filings made pursuant to Regulation A (§§230.251-230.264 of this chapter), Regulation B (§§230.300-230.346 of this chapter), Regulation D (§§230.501-508 of this chapter), Regulation E (§§230.601-230.610a of this chapter) and Regulation F (§§230.651-230.656 of this chapter), as well as filings on Form 144 (§239.144 of this chapter) where the issuer of the securities is not subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act (15 U.S.C. 78m or 78o(d), respectively);

(8) Promotional and Sales Material submitted pursuant to Securities Act Industry Guide 5 (§229.801(e) of this chapter) or otherwise supplementally furnished for review by the staff of the Division of Corporation Finance; and sales literature submitted under Rule 24b-2 of the Investment Company Act (§270.24b-2 of this chapter);

(9) Documents and symbols in a foreign language (see Rule 306 of Regulation S-T (§232.306));

(10) Exchange Act filings submitted to the Division of Market Regulation;

(11) Documents relating to investigations and litigation submitted pursuant to the Subpart D of Part 201 of this chapter;

(12) Submissions under Sections 6(c), 8(f), 17(g), and 33 of the Investment Company Act (15 U.S.C. 80a-6(c), 80a-8(f), 80a-17(g), and 80a-32) and documents related to applications for exemptive relief under any section of the Act;

(13) Annual Reports to Security Holders furnished by Public Utility Holding Companies under Exhibit A to Form U5S (§259.5s of this chapter) or under rule 29 (§250.29 of this chapter);

(14) Reports to State Commissions, if furnished by Public Utility Holding Companies under Exhibit E to Form U5S (§ 259.5s of this chapter);

(15) Maps furnished by Public Utility Holding Companies under Exhibits E to Forms U5B and U-1 (§§ 259.5b and 259.101 of this chapter).

(16) Form F-6 (§ 239.36 of this chapter);

(17) Annual reports filed with the Commission by indenture trustees pursuant to Section 313 of the Trust Indenture Act (15 U.S.C. 77mm);

(18) Applications for an exemption from Exchange Act reporting obligations filed pursuant to Section 12(h) of the Exchange Act (15 U.S.C. 78j(h)); and

(19) Written information concerning employee benefit plans required to be filed with the Commission pursuant to Rule 16b-3(b)(2)(ii) of the Exchange Act (§ 240.16b-3(b)(2)(ii) of this chapter).

[58 FR 14670, Mar. 18, 1993; 58 FR 26383, May 3, 1993, as amended at 59 FR 67761, Dec. 30, 1994; 60 FR 32824, June 23, 1995; 60 FR 57684, Nov. 17, 1995; 61 FR 67202, Dec. 20, 1996]

EFFECTIVE DATE NOTE: At 61 FR 67202, Dec. 20, 1996, § 232.101 is amended by removing paragraph (c)(7) and redesignating paragraphs (c)(8) through (c)(20) as paragraphs (c)(7) through (c)(19), effective May 5, 1997. For the convenience of the user, the superseded text is set forth as follows:

§ 232.101 Mandated electronic submissions and exceptions.

* * * * *

(c) * * *

(7) Filings made with the Commission's Regional or District Offices;

* * * * *

§ 232.102 Exhibits.

(a) Exhibits to an electronic filing that have not previously been filed with the Commission shall be filed in electronic format, absent a hardship exemption. Previously filed exhibits, whether in paper or electronic format, may be incorporated by reference into an electronic filing to the extent permitted by § 228.10(f) and § 229.10(d) of this chapter, Rule 411 under the Securities Act (§ 230.411 of this chapter), Rule 12b-23 or 12b-32 under the Exchange Act (§ 240.12b-23 or § 240.12b-32 of this

chapter), Rule 22 under the Public Utility Holding Company Act (§ 250.22 of this chapter), Rules 0-4, 8b-23, and 8b-32 under the Investment Company Act (§ 270.0-4, § 270.8b-23 and § 270.8b-32 of this chapter) and Rule 303 of Regulation S-T (§ 232.303). An electronic filer may, at its option, restate in electronic format an exhibit incorporated by reference that originally was filed in paper format.

Note to paragraph a: Exhibits to a Commission schedule filed pursuant to Section 13 or 14(d) of the Exchange Act may be filed in paper under cover of Form SE where such exhibits previously were filed in paper (prior to a registrant's becoming subject to mandated electronic filing or pursuant to a hardship exemption) and are required to be refiled pursuant to the schedule's general instructions. See Rule 311(b) of Regulation S-T (17 CFR 232.311(b)).

(b) Amendments to all exhibits shall be filed in electronic format, absent a hardship exemption.

(c) Notwithstanding any other provision of this section, an electronic filer shall, upon amendment, restate in electronic format its articles of incorporation, by-laws or investment advisory agreement (in the case of a registered investment company or a business development company).

(d) Each electronic filing requiring exhibits shall contain an exhibit index, which should immediately precede the exhibits filed with the document. The index shall list each exhibit filed. Whenever an exhibit is filed in paper pursuant to a temporary or continuing hardship exemption, the letter "P" shall be placed next to the listed exhibit in the exhibit index to reflect that the exhibit was filed in paper pursuant to such exemption. Whenever an electronic confirming copy of an exhibit is filed pursuant to a temporary hardship exemption, the electronic filer shall place the designation "CE" next to the listed exhibit in the exhibit index.

(e) Notwithstanding the provisions of paragraphs (a) through (d) of this section, after the date which is three years following a registrant's phase-in date, any incorporation by reference by a registered investment company or a business development company shall

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relate only to documents which have been filed in electronic format, unless:

(1) The document has been filed in paper pursuant to a hardship exemption (§§ 232.201 and 232.202 of this chapter) and any required confirming copy has been submitted or

(2) The document is an exhibit, filed in paper in accordance with applicable rules, to Form N-SAR being incorporated by reference only into another Form N-SAR filing.

(f) Persons submitting filings electronically under the Public Utility Act shall not be subject to paragraph (c) of this section.

[58 FR 14670, Mar. 18, 1993, as amended at 59 FR 67762, Dec. 30, 1994; 60 FR 32824, June 23, 1995]

§ 232.103 Liability for transmission errors or omissions in documents filed via EDGAR.

An electronic filer shall not be subject to the liability and anti-fraud provisions of the federal securities laws with respect to an error or omission in an electronic filing resulting solely from electronic transmission errors beyond the control of the filer, whether transmission is by magnetic tape, diskette, or direct transmission, where the error or omission is corrected by the filing of an amendment in electronic format as soon as reasonably practicable after the electronic filer becomes aware of the error or omission.

HARDSHIP EXEMPTIONS

§ 232.201 Temporary hardship exemption.

(a) If an electronic filer experiences unanticipated technical difficulties preventing the timely preparation and submission of an electronic filing, the electronic filer may file the subject filing, under cover of Form TH (§§ 239.65, 249.447, 259.604, 269.10 and 274.404 of this chapter), in paper format no later than one business day after the date on which the filing was to be made.

(1) A microfiche copy of the paper format document shall be the official filing of the registrant for purposes of the federal securities laws.

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(2) The following legend shall be set forth in capital letters on the cover page of the paper format document:

IN ACCORDANCE WITH RULE 201 OF REGULATION S-T, THIS (SPECIFY DOCUMENT) IS BEING FILED IN PAPER PURSUANT TO A TEMPORARY HARDSHIP EXEMPTION

(3) Signatures to the paper format document may be in typed form rather than manual format. See Rule 302 of Regulation S-T (§ 232.302). All other requirements relating to paper format filings shall be satisfied.

(4) If the exemption pertains to a document filed pursuant to section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m and 78o(d)) or section 30 of the Investment Company Act and the paper format document is filed in the manner specified in paragraph (a) of this section, the filing shall be deemed to have been filed by its required due date.

NOTES: 1. Where a temporary hardship exemption relates to an exhibit only, the paper format exhibit shall be filed under cover of Form SE (§§ 239.64, 249.444, 259.603, 269.8, and 274.403 of this chapter).

2. Filers unable to submit a report within a prescribed time period because of electronic difficulties shall comply with the provisions of this section and shall not use Form 12b-25 (§ 249.322 of this chapter) as a notification of late filing.

(b) An electronic format copy of the filed paper format document shall be submitted to the Commission within six business days of filing the paper format document. The electronic format version shall contain the following statement in capital letters at the top of the first page of the document:

THIS DOCUMENT IS A COPY OF THE (SPECIFY DOCUMENT) FILED ON (DATE) PURSUANT TO A RULE 201 TEMPORARY HARDSHIP EXEMPTION

NOTE: Failure to submit the confirming electronic copy of a paper filing made in reliance on the temporary hardship exemption, as required in paragraph (b) of this section, will result in ineligibility to use Forms S-2, S-3, S-8, F-2 and F-3 (see §§ 239.12, 239.13, 239.16b, 239.32 and 239.33 of this section, respectively), restrict incorporation by reference of the document submitted in paper (see Rule 303 of Regulation S-T (§ 232.303)), and toll certain time periods associated with

tender offers (see Rule 13e-4(f)(12) (§240.13e-4(f)(12) of this chapter) and Rule 14e-1(e) (§240.14e-1(e) of this chapter).

§ 232.202 Continuing hardship exemption.

(a) An electronic filer may apply in writing for a continuing hardship exemption if all or part of a filing or group of filings otherwise to be filed in electronic format cannot be so filed without undue burden or expense. Such written application shall be made at least ten business days prior to the required due date of the filing(s) or the proposed filing date, as appropriate, or within such shorter period as may be permitted. The written application shall contain the information set forth in paragraph (b) of this section.

(1) The application shall not be deemed granted until the applicant is notified by the Commission or the staff.

(2) If the Commission, or the staff acting pursuant to delegated authority, denies the application for a continuing hardship exemption, the electronic filer shall file the required document in electronic format on the required due date or the proposed filing date or such other date as may be permitted.

(3) If the Commission, or the staff acting pursuant to delegated authority, determines that the grant of the exemption is appropriate and consistent with the public interest and the protection of investors and so notifies the applicant, the electronic filer shall follow the procedures set forth in paragraph (c) of this section.

(b) The request for the continuing hardship exemption shall include, but not be limited to, the following:

(1) The reason(s) that the necessary hardware and software is not available without unreasonable burden and expense;

(2) The burden and expense involved to employ alternative means to make the electronic submission; and/or

(3) The reasons for not submitting electronically the document or group of documents, as well as justification for the requested time period.

(c) If the request is granted, the electronic filer shall submit the document or group of documents for which the continuing hardship exemption is

granted in paper format on the required due date specified in the applicable form, rule or regulation, or the proposed filing date, as appropriate. The following legend shall be placed in capital letters at the top of the cover page of the paper format document(s):

IN ACCORDANCE WITH RULE 202 OF REGULATION S-T, THIS (SPECIFY DOCUMENT) IS BEING FILED IN PAPER PURSUANT TO A CONTINUING HARDSHIP EXEMPTION

(d) If a continuing hardship exemption is granted for a limited time period, the grant may be conditioned upon the filing of the document or group of documents that is the subject of the exemption in electronic format upon the expiration of the period for which the exemption is granted.

NOTE: Where a continuing hardship exemption is granted with respect to an exhibit only, the paper format exhibit shall be filed under cover of Form SE (§§239.64, 249.444, 259.603, 269.8 and 274.403 of this chapter).

PREPARATION OF ELECTRONIC
SUBMISSIONS

§ 232.301 EDGAR Filer Manual.

Electronic filings shall be prepared in the manner prescribed by the EDGAR Filer Manual, promulgated by the Commission, which sets out the technical formatting requirements for electronic submissions. The March 1997 edition of the EDGAR Filer Manual: Guide for Electronic Filing with the U.S. Securities and Exchange Commission (Release 5.20) is incorporated into the Code of Federal Regulations by reference, which action was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Compliance with the requirements found therein is essential to the timely receipt and acceptance of documents filed with or otherwise submitted to the Commission in electronic format. Paper copies of the EDGAR Filer Manual may be obtained at the following address: Public Reference Room, U.S. Securities and Exchange Commission, Mail Stop 1-2, 450 5th Street, N.W., Washington, D.C. 20549. They also may be obtained from Disclosure Incorporated by calling (800) 638-8241. Electronic format copies are

§ 232.302

available through the EDGAR electronic bulletin board. Information on becoming an EDGAR E-mail/electronic bulletin board subscriber is available by contacting CompuServe Inc. at (800) 848-8199. Copies may be inspected at the Office of the Federal Register, Suite 700, 800 North Capitol Street, N.W., Washington, D.C.

[62 FR 8878, Feb. 27, 1997; 62 FR 13821, Mar. 24, 1997]

§ 232.302 Signatures.

(a) Signatures to or within any electronic submission shall be in typed form rather than manual format. When used in connection with an electronic filing, the term "signature" means an electronic entry in the form of a magnetic impulse or other form of computer data compilation of any letter or series of letters comprising a name, executed, adopted or authorized as a signature.

(b) Each signatory to an electronic filing shall manually sign a signature page or other document authenticating, acknowledging or otherwise adopting his or her signature that appears in typed form within the electronic filing. Such document shall be executed before or at the time the electronic filing is made and shall be retained by the filer for a period of five years. Upon request, an electronic filer shall furnish to the Commission or its staff a copy of any or all documents retained pursuant to this section.

(c) Where the Commission's rules require a registrant to furnish to a national securities exchange or national securities association paper copies of a document filed with the Commission in electronic format, signatures to such paper copies may be in typed form.

[58 FR 14670, Mar. 18, 1993, as amended at 59 FR 67762, Dec. 30, 1994]

§ 232.303 Incorporation by reference.

(a) The following documents shall not be incorporated by reference into an electronic filing:

(1) Any document filed in paper in violation of mandated electronic filing requirements;

(2) Any document filed in paper pursuant to a temporary hardship exemption for which a required confirming

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electronic copy has not been submitted.

(3) For a registered investment company or a business development company making an electronic submission more than three years after its phase-in date, documents that have not been filed in electronic format, unless:

(i) The document has been filed in paper pursuant to a hardship exemption (§§ 232.201 and 232.202 of this chapter) and any required confirming copy has been submitted or

(ii) The document is an exhibit, filed in paper in accordance with applicable rules, to Form N-SAR being incorporated by reference into another Form N-SAR filing.

(4) Any Financial Data Schedule required under Rule 483 under the Securities Act of 1933 (§ 230.483 of this chapter).

(b) If any portion of the annual or quarterly report to security holders is incorporated by reference into any electronic filing, such portion of the annual or quarterly report to security holders shall be filed in electronic format as an exhibit to the filing, as required by Item 601(b)(13) of Regulation S-K (§ 229.601(b)(13) of this chapter) and Item 601(b)(13) of Regulation S-B (§ 228.601(b)(13) of this chapter).

[58 FR 14670, Mar. 18, 1993, as amended at 59 FR 67762, Dec. 30, 1994]

§ 232.304 Graphic, image and audio material.

(a) If a filer includes graphic, image or audio material in a document delivered to investors and others that cannot be reproduced in an electronic filing, the electronically filed version of that document shall include a fair and accurate narrative description, tabular representation or transcript of the omitted material. Such descriptions, representations or transcripts may be included in the text of the electronic filing at the point where the graphic, image or audio material is presented in the delivered version, or they may be listed in an appendix to the electronic filing. Immaterial differences between the delivered and electronically filed versions, such as pagination, color, type size or style, or corporate logo need not be described.

(b)(1) The graphic, image and audio material in the version of a document delivered to investors and others shall be deemed part of the electronic filing and subject to the liability and anti-fraud provisions of the federal securities laws.

(2) Narrative descriptions of graphic and image material appearing in an electronic filing or appendix thereto also shall be deemed part of the filing. However, to the extent such descriptions represent a good faith effort to fairly and accurately describe omitted graphic and image material, they shall not be subject to the liability and anti-fraud provisions of the federal securities laws.

(c) An electronic filer shall retain for a period of five years a copy of each publicly distributed document, in the format used, that contains graphic, image or audio material where such material is not included in the version filed with the Commission. The five-year period shall commence as of the filing date, or the date that appears on the document, whichever is later. Upon request, an electronic filer shall furnish to the Commission or its staff a copy of any or all of the documents contained in the file.

(d) The performance graph that is to appear in registrant proxy and information statements relating to annual meetings of security holders (or special meetings or written consents in lieu of such meetings) at which directors will be elected, as required by Item 402(I) of Regulation S-K (§ 229.402(I) of this chapter), shall be furnished to the Commission in connection with an electronic filing by presenting the data in tabular or chart form within the electronic filing, in compliance with the formatting requirements of the EDGAR Filer Manual. Registrants also shall submit supplementally a paper copy of the performance graph to their Branch Chief in the Division of Corporation Finance.

[58 FR 14670, Mar. 18, 1993, as amended at 59 FR 67762, Dec. 30, 1994; 61 FR 24655, May 15, 1996]

§ 232.305 Number of characters per line; tabular and columnar information.

The narrative portion of a document shall not exceed 80 characters per line,

including blank spaces, and shall not be presented in multi-column newspaper format. Non-narrative information (e.g., financial statements) may be presented in tabular or columnar format and may exceed 80 positions only if it is tagged as specified in the EDGAR Filer Manual. In no event shall information presented in tabular or columnar format exceed 132 positions wide.

§ 232.306 Foreign language documents and symbols.

(a) Foreign language documents shall not be filed with the Commission in electronic format. A fair and accurate English translation of any required document shall be filed. A written representation to that effect shall be included in the English translation document and the representation shall be signed by a designated officer in the manner set forth in Rule 302 of Regulation S-T (§ 232.302). Upon request, any foreign language document otherwise required to be filed shall be provided to the Commission or the staff.

NOTE: With respect to submission of an electronic filer's latest annual budget required to be filed as Exhibit B in Form 18 (§ 249.218 of this chapter) or as Exhibit (c) in Form 18-K (§ 249.318 of this chapter), for foreign governments and political subdivisions thereof, if an English version of such filer's last annual budget as presented to its legislative body has been prepared, it shall be filed electronically. If no such version has been prepared, the budget need not be filed, but shall be provided to the Commission upon request.

(b) Foreign currency denominations shall be expressed in words or letters in the English language rather than representative symbols.

[58 FR 14670, Mar. 18, 1993; 58 FR 21349, Apr. 21, 1993, as amended at 59 FR 67762, Dec. 30, 1994]

§ 232.307 Bold face type; red ink.

Provisions requiring presentation of information in bold face type or in red ink shall be satisfied in an electronic format document by presenting such information in capital letters.

§ 232.308 Type size and font; legibility.

Provisions relating to type size, font and other legibility requirements shall

not apply to electronic format documents.

§ 232.309 Paper size; binding; sequential numbering; number of copies.

(a) Requirements as to paper size, binding, and sequential page numbering shall not apply to electronic format documents.

(b) An electronic format document, submitted in the manner prescribed by the EDGAR Filer Manual, shall satisfy any requirement that more than one copy of such document be filed with or provided to the Commission.

§ 232.310 Marking changed material.

Provisions requiring the marking of changed materials shall be satisfied by inserting the tag <R> before and the tag </R> following a paragraph containing changed material. Financial statements and notes thereto need not be marked for changed material.

[58 FR 14670, Mar. 18, 1993; 58 FR 21509, Apr. 21, 1993]

§ 232.311 Documents submitted in paper under cover of Form SE.

Form SE (§§ 239.64, 249.444, 259.603, 269.8, and 274.403 of this chapter) shall be filed as a paper cover sheet to the following documents submitted to the Commission in paper:

(a) Exhibits filed in paper pursuant to a hardship exemption shall be filed under cover of Form SE. See Rules 201 and 202 of Regulation S-T (§§ 232.201 and 232.202).

(b) Exhibits to a Commission schedule filed pursuant to Section 13 or 14(d) of the Exchange Act may be filed in paper under cover of Form SE where such exhibits previously were filed in paper (prior to a registrant's becoming subject to mandated electronic filing or pursuant to a hardship exemption) and are required to be refiled pursuant to the schedule's general instructions.

(c) Exhibits to Form N-SAR (§ 274.101 of this chapter), other than the Financial Data Schedule required under Rule 483 under the Securities Act of 1933 (§ 230.483 of this chapter), may be filed in paper under cover of Form SE.

(d) Annual Reports to Security Holders furnished by Public Utility Holding Companies as Exhibit A to Form U5S (§ 259.5s of this chapter) or under rule 29

(§ 250.29 of this chapter) shall be filed in paper under cover of Form SE.

(e) Reports to State Commissions, if furnished by Public Utility Holding Companies as Exhibit E to Form U5S (§ 259.5s of this chapter), shall be filed in paper under cover of Form SE.

(f) Maps furnished by Public Utility Holding Companies under Exhibits E to Forms U5B and U-1 (§ 259.5b and 259.101 of this chapter) shall be filed in paper under cover of Form SE.

(g) The Form SE shall be submitted in the following manner:

(1) If the subject of a temporary hardship exemption is an exhibit only, the exhibit shall be filed under cover of Form SE no later than one business day after the date the exhibit was to be filed electronically.

(2) An exhibit filed pursuant to a continuing hardship exemption, or any other document filed in paper under cover of Form SE (other than an exhibit filed pursuant to a temporary hardship exemption), as allowed by paragraphs (a) through (g) of this section, may be filed up to six business days prior to, or on the date of filing of, the electronic format document to which it relates but shall not be filed after such filing date. If a paper document is submitted in this manner, requirements that the document be filed with, provided with or accompany the electronic filing shall be satisfied.

(h) Any requirements as to delivery or furnishing the information to persons other than the Commission shall not be affected by this section.

[58 FR 14670, Mar. 18, 1993, as amended at 59 FR 67763, Dec. 30, 1994; 61 FR 30402, June 14, 1996]

FINANCIAL DATA SCHEDULE

§ 232.401 Financial Data Schedule.

A Financial Data Schedule shall be submitted as an exhibit to the filing(s) to which it relates in accordance with Item 601(c) of Regulation S-K (§ 229.601(c) of this chapter), Item 601(c) of Regulation S-B (§ 228.601(c) of this chapter) or Rule 483(e) (§ 230.483(e) of this chapter).

NOTE: An electronic filer's failure to furnish a Financial Data Schedule will not prevent acceptance of the filing for which the Schedule is required. However, inasmuch as

the Schedule may be used by the Commission staff in its review of the filing, processing of the filing may be delayed pending filing of the Schedule. Further, electronic filers that have not filed a required Financial Data Schedule will be ineligible to use Form S-2, Form S-3 and Form S-8 (§§ 239.12, 239.13 and 239.16b of this chapter, respectively).

§ 232.402 Liability for Financial Data Schedule.

A Financial Data Schedule shall not be deemed filed for purposes of section 11 of the Securities Act (15 U.S.C. 77k), section 18 of the Exchange Act (15 U.S.C. 78r), section 16 of the Public Utility Act (15 U.S.C. 79p), section 323 of the Trust Indenture Act (15 U.S.C. 77www), or section 34(b) of the Investment Company Act (15 U.S.C. 80a-33(b)), or otherwise be subject to the liabilities of such sections, and shall not be deemed a part of a registration statement to which it relates. The Financial Data Schedule shall, however, be subject to all other liability and anti-fraud provisions of the Acts. An electronic filer that accurately extracts the Financial Data Schedule information from its financial statements, financial statement schedules, or disclosures prepared in response to applicable industry guides, shall not be liable, under the Securities Act, the Exchange Act or the Trust Indenture Act for such extracted information, *provided that* the extracted data was not materially false or misleading in the underlying financial statements, financial statement schedules, or disclosures prepared in response to applicable industry guides.

EDGAR FUNCTIONS

§ 232.501 Modular submissions and segmented filings.

An electronic filer that subscribes to the optional EDGAR electronic mail service may use the following procedures to submit information on the EDGAR system for subsequent inclusion in an electronic filing.

(a) *Modular submissions.* (1) One or more electronic format documents may be submitted for storage in the non-public EDGAR data storage area as a modular submission for subsequent inclusion in one or more electronic submissions.

(2) An electronic filer shall be permitted a maximum of ten modular submissions in the non-public EDGAR data storage area at any time, not to exceed a total of one megabyte of digital information. If an electronic filer attempts to submit a modular filing which would cause either of these limits to be exceeded, EDGAR will suspend the modular submission and notify the electronic filer by electronic mail. After six business days, the modular submission held in suspense will be deleted from the system.

(3) A modular submission may be corrected or amended only by resubmitting the entire modular submission.

(b) *Segmented filings.* (1) Segments of a document intended to become an electronic filing may be submitted to the non-public EDGAR data storage area for assembly as a segmented filing.

(2) Segments shall be submitted no more than six business days in advance of the anticipated filing date and are not limited in number or size. They may be submitted from several geographic locations by more than one filing entity. Segments may be included in only one electronic filing. Once used, segments will be removed from the non-public EDGAR data storage area. The assembly of segments into a segmented filing shall be effected pursuant to the applicable provisions of the EDGAR Filer Manual. If segments are not prepared in accordance with the EDGAR Filer Manual, the filing will not be constructed. The filing date of a segmented filing shall be the date upon which the filing is assembled and satisfies the requirements of Rule 13(a) of Regulation S-T (§ 232.13(a)).

(3) Segments may be corrected or amended only by resubmitting the entire segment.

(c) A modular submission or segment shall not:

(1) be publicly available;

(2) Be deemed filed with the Commission for purposes of Securities Act section 11 (15 U.S.C. 77k), Exchange Act section 18 (15 U.S.C. 78r), Public Utility Act section 16 (15 U.S.C. 79p), Trust Indenture Act section 323 (15 U.S.C. 77www), or Investment Company Act section 34(b) (15 U.S.C. 80a-33(b)) prior to its inclusion in a filing; or

(3) Be deemed to constitute an official filing prior to its inclusion in a filing under the federal securities laws. Once a modular submission or segment has been included in an electronic filing, the liability and anti-fraud provisions of the Securities Act, the Exchange Act, the Trust Indenture Act, the Public Utility Act and the Investment Company Act shall apply to the electronic filing.

[58 FR 14670, Mar. 18, 1993; 58 FR 21349, Apr. 21, 1993]

§§ 232.600–232.899 [Reserved]

TRANSITION TO ELECTRONIC FILING

§ 232.901 Division of Corporation Finance EDGAR Transition.

(a) *Registrant electronic submissions.* Registrants whose filings are subject to review by the Division of Corporation Finance, except for foreign private issuers and foreign governments, shall be subject to the electronic filing requirements of this part in accordance with the registrant phase-in schedule published by the Commission, including any amendments thereto.

(1) All other public companies, except for foreign private issuers and foreign governments, shall become subject to the electronic filing requirements of this part, including any company that makes a registered offering under the Securities Act or that becomes subject to the reporting requirements of the Exchange Act, at the same time the last group of companies in the phase-in schedule becomes subject to mandated electronic filing.

(2) A registrant may request to participate in a phase-in group other than the group established by the Commission for the registrant. If such a request is granted by the Commission, or by the staff pursuant to Rule 30–1(m) of the Rules of Organization and Management (§200.30–1(m) of this chapter), the registrant shall become subject to the mandated filing requirements of Rule 101 of Regulation S–T (§232.101) on the phase-in date applicable to the group to which it has been reassigned.

Note to paragraph (a): Registrants become subject to mandated electronic filing on their phase-in date. Consequently, all documents required to be filed in electronic for-

mat pursuant to Rule 101 of Regulation S–T (§232.101) filed on or after a registrant's phase-in date must be filed electronically, absent a hardship exemption, even if the transaction to which a filing relates was commenced in paper before the phase-in date and is still in process on the registrant's phase-in date. See Rule 101(a)(1)(iii) of Regulation S–T, that provides for optional paper filing of a Form 10–K or 10–KSB if it is the first document filed after a registrant's phase-in date.

(b) *Third party filers.* Any third party filing made pursuant to Section 13 or 14 of the Exchange Act with respect to a registrant that is subject to mandated electronic filing shall be filed in electronic format.

(c) *Electronic filings involving both a paper filer and an electronic filer.* Filings involving both a paper filer and an electronic filer shall be made as follows:

(1) *Cash tender offers and proxy contests.* Where a paper filer commences a cash tender offer or proxy contest (including a solicitation in opposition) with respect to an electronic filer, submissions by both filers relating to the transaction shall be in electronic format. Where an electronic filer commences a cash tender offer or proxy contest with respect to a paper filer, the electronic filer is permitted, but not required, to submit all filings in electronic format. If the electronic filer elects to file in electronic format in connection with the transaction, all related submissions by the electronic filer must be in electronic format. If the electronic filer elects to file in electronic format, the paper filer is permitted, but not required, to submit all filings in electronic format. If the paper filer elects to file in electronic format, the paper filer shall continue to make all filings relating to that transaction in electronic format.

(2)(i) *Securities Act registered business combinations.* Where a paper filer engages in an exchange offer, merger, or other business combination involving a Securities Act registration statement filed by that entity with respect to an electronic filer, submissions by both parties relating to that transaction shall be in electronic format. Where an electronic filer engages in an exchange offer, merger, or other business combination involving a Securities Act

registration statement filed by that entity with respect to a paper filer, the electronic filer shall submit all filings in electronic format. The paper filer is permitted, but not required, to submit all filings in electronic format. If the paper filer elects to file in electronic format, the paper filer shall continue to make all filings relating to that transaction in electronic format.

(ii) *Cash mergers involving joint proxy statements.* Where a paper filer and an electronic filer seek a cash merger involving a joint proxy statement, submissions by both parties relating to that transaction shall be in electronic format.

(3) *Co-registrants.* Where a paper filer and an electronic filer are coregistrants with respect to an offering required to be registered under the Securities Act, the registration statement shall be filed in electronic format. Coregistrants that become subject to the reporting requirements of section 13(a) or 15(d) (15 U.S.C. 78m and 78o(d)) of the Exchange Act shall submit all reports in electronic format if one of the registrants is an electronic filer.

(4) *Schedules 13D and 13G.* Where a paper filer is required to file a Schedule 13D or 13G (§§ 240.13d-101 and 240.13d-102 of this chapter) relating to an electronic filer in accordance with paragraph (b) of this section, the Schedule 13D or 13G shall be filed in electronic format. Where an electronic filer is required to file a Schedule 13D or 13G relating to a paper filer, the Schedule 13D or 13G may be filed in electronic format.

Note to paragraph (c)(4): While companies subject to mandated electronic filing generally may choose to electronically file Schedules 13D and 13G with respect to a paper filer, domestic electronic filers are restricted from doing so with respect to foreign private issuers because EDGAR currently requires an IRS tax identification number to be inserted for the subject company as a prerequisite to acceptance of the filing. Such filings should be made in paper until the EDGAR system is modified to process them electronically.

(d) *Paper Copies of Electronic Filings.* Electronic filers, including third party filers, shall submit to the Commission a paper copy of their first electronic filing, as follows:

(1) The paper copy shall be either a document that meets the requirements of the applicable Commission rules and regulations for paper filings or a paper printout of the electronic filing. If the copy being submitted is the paper printout of the electronic filing, the header information specified in the EDGAR Filer Manual shall be omitted to ensure that confidential information contained in the header remains non-public.

(2) The paper copy shall be sent to the following address: OFIS Filer Support, SEC Operations Center, 6432 General Green Way, Alexandria, VA 22312-2413. The paper copy shall be received by the Commission no later than six business days after the electronic filing. The following legend shall be typed, printed or stamped in capital letters at the top of the cover page of the paper copy:

THIS PAPER DOCUMENT IS BEING SUBMITTED PURSUANT TO RULE 901(d) OF REGULATION S-T.

(3) Signatures are not required for conforming paper format documents submitted pursuant to paragraph (d) of this section.

[58 FR 14670, Mar. 18, 1993, as amended at 59 FR 67763, Dec. 30, 1994]

§ 232.902 Division of Investment Management EDGAR transition.

(a) *Registrant transition to electronic submission via EDGAR.* Registrants whose filings are subject to review by the Division of Investment Management shall be subject to the electronic filing requirements of this part ("phased in") in accordance with the phase-in schedule established and published by the Commission, including any amendments thereto (the "Phase-In Schedule"). At the conclusion of phase in, all remaining registered investment companies or business development companies shall be subject to the electronic filing requirements of this part.

Note to paragraph (a): Registrants become subject to mandated electronic filing on their phase-in date. Consequently, all documents required to be filed in electronic format pursuant to Rule 101 of Regulation S-T (§ 232.101) filed on or after a registrant's phase-in date must be filed electronically, absent a hardship exemption, even if the

transaction to which a filing relates was commenced in paper before the phase-in date and is still in process on the registrant's phase-in date. See paragraph (e) of this section, that provides for optional paper filing of certain filings under Rule 497 under the Securities Act of 1933 (§230.497 of this chapter).

(b) *Phase-in rule for investment companies.* (1) Each registered investment company or business development company listed on the Phase-In Schedule is deemed to have the phase-in date assigned to the group in which it is included as listed on the schedule, or as may be designated by the Commission.

(2) For any investment company not listed on the Phase-In Schedule (including any company that subsequently registers under the Investment Company Act):

(i) An open-end or closed-end management investment company that has the same investment adviser, or a unit investment trust that has the same depositor, as a registrant that is listed on the Phase-In Schedule shall have the same phase-in date as the registrant listed on the schedule.

(ii) A closed-end management investment company that does not have an investment adviser shall have the same phase-in date as a registrant having an investment adviser that is, or is affiliated with, the principal underwriter of the unlisted registrant.

(3) A registrant not listed on the Phase-In Schedule that has more than one investment adviser shall be deemed to have the same investment adviser as a registrant that is listed on the schedule if any of its investment advisers, other than sub-advisers, are investment advisers to the listed registrant.

(4) A registrant that is not phased in that subsequently changes its investment adviser to one that is the investment adviser of a registrant that is phased in shall be deemed to be phased in at the time it changes its investment adviser.

(5) A registrant that is phased in that subsequently changes its investment adviser to one that is the investment adviser of a registrant that is not phased in shall remain phased in.

(c) *Phase-in rule for public utility filers.* When a Public Utility Filer is phased in to electronic filing in accordance with the Commission's published

phase-in schedule, it will be considered phased in for purposes of all filings submitted to the Commission under the Public Utility Act, except as otherwise provided, and all such filings shall be submitted electronically, absent a hardship exemption granted by the Commission. In addition, a subsidiary company of a phased-in public-utility holding company shall be required, absent a hardship exemption granted by the Commission, to submit all required filings under the Public Utility Act electronically. Any Public Utility Filer that does not make Securities Act or Exchange Act filings and is not part of a holding company system previously phased in will be deemed to have the same phase-in date for electronic filing as the final phase-in group of registrants whose filings are subject to review by the Division of Corporation Finance.

(d) *Reassignment of phase-in group.* The Commission may, in its discretion, grant or deny a request by a registrant to participate in a phase-in group other than the group established under (b)(1) or (2) above.

(e) *Required Electronic Filing for Phased-in Filers.* A registrant that is phased in, under either the mandatory electronic filing provisions of paragraphs (a), (b), or (c) or by reassignment under paragraph (d) of this section, shall file electronically all filings which are mandated electronic submissions under Rule 101 of Regulation S-T (§232.101 of this chapter) and which are made on or after a registrant's phase-in date, *provided, however* that a registrant need not file electronically a filing, after the registrant's phase-in date, under Rule 497 under the Securities Act of 1933 (§230.497 of this chapter) that relates solely to a registration statement or post-effective amendment filed prior to the registrant's phase-in date and is submitted for the purpose of filing the definitive prospectus and/or statement of additional information for that registration statement or amendment. A registrant submitting electronically a Rule 497 filing for the purpose of "stickering" its prospectus and/or statement of additional information need not submit electronically the prospectus and/or statement of additional

information to which the “sticker” relates, provided that the text of the prospectus and/or statement of additional information has already been filed electronically as a public document.

(f) *Electronic filings involving both a paper filer and an electronic filer.* Filings involving both a paper filer and an electronic filer shall be made as set forth in this section, provided, however, that the following provisions shall not affect a filer’s phase-in date for mandatory electronic filing.

(1) *Cash tender offers and proxy contests.* Where a paper filer commences a cash tender offer or proxy contest (including a solicitation in opposition) with respect to an electronic filer, submissions by both filers relating to the transaction shall be in electronic format. Where an electronic filer commences a cash tender offer or proxy contest with respect to a paper filer, the electronic filer is permitted, but not required, to submit all filings in electronic format. If the electronic filer elects to file in electronic format in connection with the transaction, all related submissions by the electronic filer must be in electronic format. If the electronic filer elects to file in electronic format, the paper filer is permitted, but not required, to submit all filings in electronic format. If the paper filer elects to file in electronic format, the paper filer shall continue to make all filings relating to that transaction in electronic format.

(2) *Securities Act registered business combinations.* Where a paper filer engages in an exchange offer, merger, or other business combination involving a Securities Act registration statement filed by that entity with respect to an electronic filer, submissions by both parties relating to that transaction shall be in electronic format. Where an electronic filer engages in an exchange offer, merger, or other business combination involving a Securities Act registration statement filed by that entity with respect to a paper filer, the electronic filer shall submit all filings in electronic format. The paper filer is permitted, but not required, to submit all filings in electronic format. If the paper filer elects to file in electronic format, the paper filer shall continue

to make all filings relating to that transaction in electronic format.

(3) *Schedules 13D and 13G.* Where a paper filer is required to file a Schedule 13D or 13G (§§240.13d-101 and 240.13d-102 of this chapter) relating to an electronic filer in accordance with paragraph (b) of this section, the Schedule 13D or 13G shall be filed in electronic format. Where an electronic filer is required to file a Schedule 13D or 13G relating to a paper filer, the Schedule 13D or 13G may be filed in electronic format.

(g) *Paper Copies of Electronic Filings.* Electronic filers, including third party filers, shall submit to the Commission a paper copy of their first electronic filing, as follows:

(1) The paper copy shall be either a document that meets the requirements of the applicable Commission rules and regulations for paper filings or a paper print-out of the electronic filing. If the copy being submitted is the paper printout of the electronic filing, the header information specified in the EDGAR Filer Manual shall be omitted to ensure that confidential information contained in the header remains non-public.

(2) The paper copy shall be sent to the following address: OFIS Filer Support, SEC Operations Center, 6432 General Green Way, Alexandria, Virginia 22312-2413. The paper copy shall be received by the Commission no later than six business days after the electronic filing. The following legend shall be typed, printed or stamped in capital letters at the top of the cover page of the paper copy:

THIS PAPER DOCUMENT IS BEING SUBMITTED PURSUANT TO RULE 902(g) OF REGULATION S-T.

(3) Manual signatures are not required for conforming paper format documents submitted pursuant to paragraph (g) of this section.

(4) A filer that elects to file electronically forms permitted to be filed electronically in advance of a filer’s mandatory phase-in date shall not be required to submit a paper copy of each electronic filing until the filer becomes subject to mandatory electronic filing.

[58 FR 14670, Mar. 18, 1993, as amended at 59 FR 67763, Dec. 30, 1994]

§ 232.903 Division of Investment Management electronic submissions during transition.

In addition to the electronic submission requirements set forth in rule 101 of Regulation S-T (§ 232.101), the following provisions shall apply during the mandatory electronic filing phase-in period:

(a) *Permitted electronic submissions—(1) Filings by investment companies.* Prior to its phase-in date, a filer that is a registered investment company or a business development company may, but is not required to, submit Form N-SAR (§ 274.101 of this chapter) in electronic format, *provided that*, if the filer elects to file Form N-SAR in electronic format, all subsequent amendments to the subject Form N-SAR shall be filed in electronic format.

(2) *Public Utility Act Filings.* Prior to its phase-in date, a filer submitting filings under the Public Utility Act may, but is not required to, submit those filings in electronic format *provided that*, if the filer elects to submit a filing in electronic format, all subsequent amendments to the subject filing shall be filed in electronic format.

(3) *Form 13F.* An institutional investment manager required by section 13(f)(1) (15 U.S.C. 78m(f)(1)) of, and rule 13f-1 (§ 240.13f-1 of this chapter) under, the Exchange Act to file a report on Form 13F (§ 249.325 of this chapter) with the Commission may file that report on magnetic tape in the format described in Form 13F-E (§ 249.326 of this chapter) *provided that*, if the filer elects to submit a filing in electronic format, all subsequent amendments to the subject filing shall be filed in electronic format.

(b) *Amendments to paper filings—(1) Filings by investment companies.* Unless otherwise specifically provided in rules or instructions pertaining to the submission of a specific form, amendments to filings filed in paper prior to the phase-in date of a registrant that is a registered investment company or a business development company shall be submitted in electronic format in accordance with rule 101 of Regulation S-T (§ 232.101). The subject filing, as amended, including any exhibit that has been previously filed only in paper and which is incorporated by reference

into the filing, shall be filed electronically in its entirety, except as otherwise permitted under rules 102 (b), (c), and (e) of Regulation S-T (§§ 232.102 (b), (c) and (e)).

(2) *Public Utility Act Filings.* Unless otherwise specifically provided in rules or instructions pertaining to the submission of a specific form, amendments to filings under the Public Utility Act filed in paper prior to the phase-in date of the filer shall be submitted in electronic format in accordance with rules 101 and 102 of Regulation S-T (§§ 232.101 and 232.102).

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

Sec.

239.0-1 Availability of forms.

Subpart A—Forms for Registration Statements

239.4-239.8 [Reserved]

239.9 Form SB-1, optional form for the registration of securities to be sold to the public by certain small business issuers.

239.10 Form SB-2, optional form for the registration of securities to be sold to the public by small business issuers.

239.11 Form S-1, registration statement under the Securities Act of 1933.

239.12 Form S-2, for registration under the Securities Act of 1933 of securities of certain issuers.

239.13 Form S-3, for registration under the Securities Act of 1933 of securities of certain issuers offered pursuant to certain types of transactions.

239.14 Form N-2, for closed-end management investment companies registered on Form N-8A.

239.15 Form N-1, for open-end management investment companies registered on Form N-8A.

239.15A Form N-1A, registration statement of open-end management investment companies.

239.16 Form S-6, for unit investment trusts registered on Form N-8B-2.

239.16b Form S-8, for registration under the Securities Act of 1933 of securities to be offered to employees pursuant to employee benefit plans.

239.17 [Reserved]

239.17a Form N-3, registration statement for separate accounts organized as management investment companies.

239.17b Form N-4, registration statement for separate accounts organized as unit investment trusts.